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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 413.

BAY STATE DREDGING & CONTRACTING COMPANY,

Petitioner,

vs.

L. METCALFE WALLING, Administrator of the Wage and Hour Division, U. S. Department of Labor,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

REPLY BRIEF OF PETITIONER FOR CERTIORARI.

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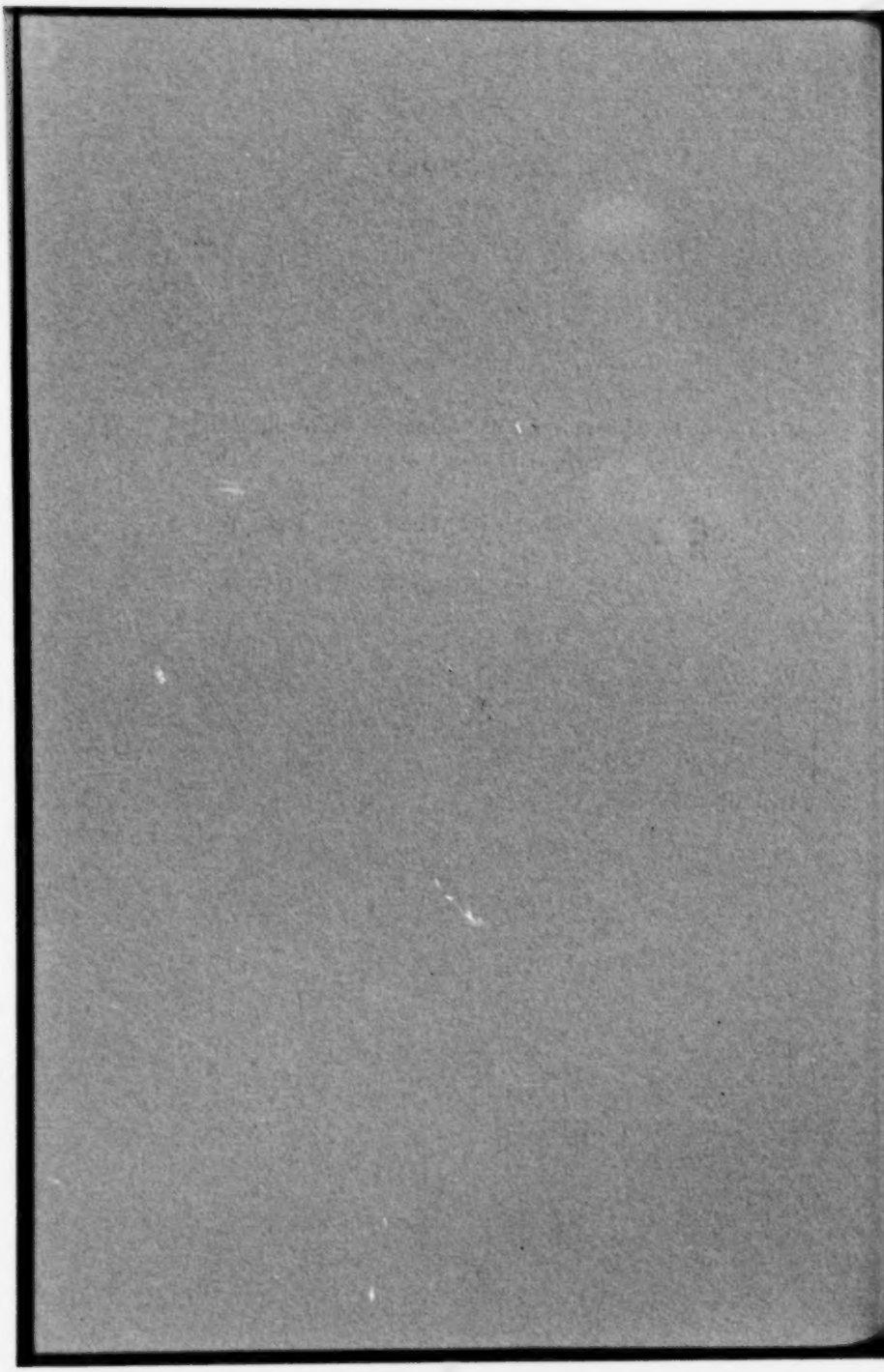

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Statement.

This is in reply to the brief for the Respondent in the case at bar which incorporates by reference the argument contained in his brief in *Great Lakes Dredge & Dock Company v. Walling, Administrator of the Wage & Hour Division, U. S. Department of Labor, No. 412.*

Argument in Reply.

The burden of the Respondent's argument in opposition to the Petition for Certiorari is that a construction of the

exemption contained in Section 13 (a) (3) of the Fair Labor Standards Act, (52 Stat. 1060, 29 U. S. C. 201) which would promote the apparent policy and objects of the Congress, prohibits the inclusion of dredge crews within the meaning of the term "seaman."

In the Respondent's brief in *Great Lakes Dredge & Dock Co. v. Walling,* No. 412, it is stated by the Respondent at page 11,

> "Thus, long before the enactment of the Fair Labor Standards Act, Congress explicitly rejected the suggestion that dredgeworkers in respect to their hours of labor were to be classified with seamen. There is nothing in the legislative history to imply that the Fair Labor Standards Act is framed on a different policy."

The Petitioner, therefore, respectfully calls the attention of this Court to a portion of the Congressional Record dealing with the precise issue. On December 17, 1937, Representative Magnuson proposed, in the House of Representatives, an amendment to the Fair Labor Standards Act.* His amendment sought to exclude the exemption given a "seaman." In the course of his remarks, Representative Magnuson had this to say:

> "Mr. Chairman, for two days everybody in the House has been trying to get someone out of this bill. The effect of my amendment is to put a class of people into this bill. The bill on page 4 excludes seamen . . .
>
> "The committee will answer my amendment to this effect, that they come under the Maritime Act. The Maritime Act regulates the wages and hours of only one-tenth of the seamen of the United States, only those who work on government subsidized boats, in-

* 82 Cong. Rec. Pt. II, 1784, 1785.

cluding about ten thousand men. There are one hundred fourteen thousand seamen in the United States who are working under bad conditions. This bill absolutely excludes them . . . ."

Thereafter the following colloquy occurred:

"Mr. Schneider of Wisconsin:

Do the seamen want to come in under this Act or do they not?

"Mr. Magnuson:

I do not care whether they want to or not . . . I realize that there probably are some of the unions that maybe do not want them under the bill, but I am speaking for the rank and file."

Congressman Bland then rose in opposition to Mr. Magnuson's amendment and made the following statement:

"Mr. Bland:

Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, if this amendment be adopted, it will be one more stroke for the destruction of the American Merchant Marine, that is now fighting for its existence. The gentleman has said that the Maritime Commission fixes hours and wages. They are authorized to regulate wages, but the hours are fixed by legislation of Congress. While I do not care to make a personal reference, the late Billie Connery told me just shortly before the last Session that the Merchant Marine Committee had done more in the interests of the seamen in the last few years than had been done in the history of the Republic. I am asking that you leave this subject alone.

It goes further, however; it regulates the fishing boats; it regulates every boat on intercoastal waters

and also on the inland waterways. You cannot afford to deal with that proposition in this way. I do not believe that the seamen themselves want this legislation. They are fighting in their own way and by their own contracts to make suitable provisions with respect to their wages; and I appeal to this House, if it wants to preserve a Merchant Marine service, an auxiliary to the Navy of this country and for foreign commerce, that it defeat this amendment; if it wants to preserve the boats on coastwise and intercoastal waters, on the inland waterways, and on our bays and rivers, that it defeat this amendment and not allow another complication and handicap at this time. Leave us to work out the problems as we are trying to work them out and as we have in a measure worked them out in the interests of these people.

I appeal to you to defeat this amendment.

(Applause.)

(Here the gavel fell.)'"*

Thereupon, Mr. Magnuson's amendment was put to a vote and decisively defeated.

It seems clear that Mr. Bland, whose position was concurred in by a majority of the House of Representatives, believed that the term "seaman" covered the crew of "every boat on intercoastal waters and also on the inland waterways." It likewise seems clear that the House did not conceive of the exemption as extending only to those who were already subject to the jurisdiction of the Maritime Commission.

It is respectfully submitted that the quoted excerpt from the Congressional Record destroys the argument of the

* 82 Cong. Rec. Pt. II, 1784, 1785.

Respondent that "There is nothing in the legislative history to imply that the Fair Labor Standards Act is framed on a different policy." (Respondent's brief in *Great Lakes Dredge & Dock Co. v. Walling*, No. 412, at p. 11.)

The apparent policy and object of the Congress is here disclosed to include the entire class without any stated exceptions and without reference to the size or nature of the vessel, the locus of the navigable waters or the jurisdiction of other governmental agencies.

Respectfully submitted,

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